IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8555 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKOREBHAI JIVANBHAI PATEL & 1 - Petitioner(s)
Versus
DEPUTY COMMISSIONER & 4 - Respondent(s)

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Appearance :
MR RR MARSHALL for Petitioner(s) : 1 - 2.
MS ML SHAH, AGP for Respondent(s) : 1 – 3,5.
MR RK MISHRA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/09/2006

ORAL JUDGMENT

1. Rule. Learned AGP Ms. M.L. Shah waives service of notice of rule on behalf of respondents no.

1,2 and 3, learned advocate Shri R.K. Mishra waives service of notice of rule on behalf of respondent no.4. Learned advocate Shri R.R. Marshal for the petitioner seeks permission to delete respondent no.5. Permission is granted. Learned advocate Shri Marshal for the petitioner seeks permission to join Assistant Charity Commissioner, Valsad as party respondent. Permission is granted. Learned AGP Ms. M.L. Shah waives service of notice of rule on behalf of the newly added respondent also. At the request of learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. This petition primarily concerns certain issues about the management and control of a trust namely Shri Dharampur Taluka Adivasi Yuvak Mandal. The petitioners have filed the petition making certain allegations against respondent no.4. It is the case of the petitioners that respondent no.4 is aged about 93 years and does not keep good health. Taking advantage of this

situation, according to the petitioners one Shri Chotubhai Manubhbai Gamit has tired to misuse the trust funds. It is the case of the petitioners that the petitioner no.1 as the Secretary and petitioner no.2 as the President of the trust have been managing the trust since quite sometime now. That they have been incurring expenditures for meeting with the expenses for running several Ashram Shalas and other education institutions run by the trust. It is the case of the petitioners that for the purchase of grocery, ration and other necessary items for the inmates of Ashram Shala and for meeting with other expenditures of the trust, the petitioners have to borrow funds. They also have been procuring the supplies on credit. It is the case of the petitioners that respondents no.1 to 3 after verification of accounts would reimburse the expenditures of the trust. The petitioners filed this petition contending that the amount of Rs. 15,75,206/- was paid to respondent no.4 by delivering a cheque personally to him by respondent no.2. It is the

case of the petitioners that Shri Chotubhai Manubhbai Gamit ensured that cheques are delivered to respondent no.4 personally which is not the normal practise and the said cheques were deposited in newly opened bank accounts in which Shri Chotubhai Manubhbai Gamit was made authorsied signatory though the said Shri Chotubhai Manubhbai Gamit has no concern with the trust and has in fact been a defeated candidate for the post of member of the Managing Committee of the trust.

3. With these allegations when the petition was filed, learned Single Judge of this Court by an ex-parte interim order dated 25-4-2006 while issuing notice to the respondents further directed that respondents should recover the cheques paid to respondent no.4 and present the same before the Court on the returnable date. It was further provided that in the event, cheques are deposited in the Bank, respondent no.4 shall not withdraw any amount of the said cheques from the bank.

4. After by-parte hearing thereafter on 4-5-2006, learned Single Judge passed following order :

"Heard the learned advocates extensively.

Pending this petition, it is directed that the respondent No.3 – Ashram Shala Adhikari, Valsad will forthwith recover the sum of Rs.15,75,206=00 paid to the respondent No.4 on 18th April, 2006. The respondent No.4 will immediately remit the said sum to the respondent No.3 by cheque/s. The respondent No.4 will also close the accounts opened by him with the UTI Bank at Valsad and the Bank of Baroda at Khergam. The respondent No.3 shall retain the said sum of Rs.15,75,206=00 with himself in a separate account/under separate head. The respondent No.3 will, within fifteen days from today, verify the record of the concerned Ashram Schools/Hostels for ascertainment of the outstanding dues of the suppliers. After ascertainment of the outstanding dues, the concerned suppliers shall be paid their dues preferably by cheque or by demand draft. The respondent No.3 will maintain record of the payment made by him and the receipts received for such payment. If any of the staff of such school/hostel has not been paid the salary, the amount of such salary shall be paid by the respondent No.3, after verification of the accounts, within six weeks from today. The respondent No.3 will maintain the record of the money spent under this order and shall produce the same before this Court on the next date of hearing.

As to the outstanding loan amount, order shall be made on the next date of hearing.

Stand over to 26th June, 2006. Registry will send the writ forthwith."

5. Pursuant to the said interim orders, the official respondents have carried out the process of disbursement of the amounts. The

petitioners however, thereafter, sought and were granted permission to amend the petition to include the question of further payments also.

6. Respondent no.4 has filed affidavits and opposed the petition.

7. Having heard learned advocates appearing for the parties, it would appear that even respondent no.4 does not seriously dispute that for at-least sometime, he did not enjoy good health. During the said period, he could not even put his signatures on official correspondence and documents. It would also appear that new bank accounts were opened to deposit the cheque of Rs. 15,75,206/- issued by the Government. It was personally handed over to respondent no.4 by respondent no.2. It would prima facie appear that Shri Chotubhai Manubhbai Gamit though was not a member of the Board of Directors of the Trust, was made an authorised signatory in such newly opened accounts.

8. Having heard learned advocates, I also find that there are serious disputes and rival claims about the conduct of election of the trust. The petitioner claims that petitioner no.1 is an elected Secretary of the trust and petitioner no.2 is an elected President. Both having been elected through a valid process of election conducted on 16-4-2006. On the other hand the case of respondent no.4 is that he is validly elected as President of the trust through an election held on 23-6-2006. However, what is not in dispute is that Change Reports filed by rival groups pursuant to both processes of elections as claimed are pending before the Charity Commissioner and no decision has been taken so far on these change reports.

9. I do take note of the contention of learned advocate Shri R.K. Mishra for respondent no.4 that the Joint Charity Commissioner, Surat by his order dated 12-5-2006 gave certain directions for holding of the election. However, validity of any further process of election

pursuant to the said order is yet to be established on record and even the change report submitted by respondent no.4 and other members of his group is yet to be accepted by the Charity Commissioner's office. Under the circumstances, considering the facts of the case and certain peculiar circumstances, I find that to safeguard the interests of public funds as also to safeguard the interests of large number of students studying in different educational institutions run by the trust somewhat out of the ordinary course is required to be adopted.

10. Firstly it would be necessary that Charity Commissioner be requested to take an early decision on the pending change reports being applications no. 61/2006 and 30,34,65 and 66 of 2006.

11. Until such time the same is done, modus adopted by this Court in the interim order dated 4-5-2006 shall have to be followed for subsequent period also.

12.In the result, following directions are issued.

1. The newly added respondent i.e. Assistant Charity Commissioner, Valsad is requested to hear and dispose of the above applications for change reports expeditiously and in any case not later than two months from the date of receipt of a copy o this order.

2. Until such time the said authority takes a final decision, respondent no.3 shall disburse amounts to the suppliers only after verifying record of the concerned Ashram Shalas/hostels regarding the outstanding dues. No amount in excess of Rs. 5,000/- shall be disbursed other-wise by cheque or by Demand Draft. Respondent no.3 shall maintain records of payments made by him and will also maintain the receipts in token of having made such payments. He will also, after ascertaining, make payments for salary to the staff of the school and hostels. He will also maintain records including

receipts obtained from the staff.

13. With these directions, the petition is disposed of. I have recorded rival contentions and my prima facie impression only for justification of the ultimate direction. The authority shall decide the issues without being influenced by any of the observations contained in this order. Rule made absolute to the above extent with no order as to costs.

Direct service to newly added respondent is permitted.

(Akil Kureshi, J.)

(raghu)